

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF GEORGIA  
WAYCROSS DIVISION

IN RE: ) CHAPTER 13  
 ) CASE NO. 96-51131-JDW  
DEBORAH S. DUKES, )  
 )  
DEBTOR )

ORDER ON DEBTOR'S MOTION FOR STAY PENDING APPEAL

In an order dated September 15, 1997, this Court denied confirmation of Debtor's Chapter 13 plan which had proposed to establish an equitable lien in favor of NationsBank, a creditor in this case. Following the entry of that order, Debtor modified her plan to treat NationsBank as a general unsecured creditor in accordance with the terms of the order. The modified plan was confirmed. At the final confirmation hearing, NationsBank requested that the Court withhold disbursements to unsecured creditors, the principal beneficiaries of the order, until such time as the order denying confirmation could be reviewed on appeal. The Court will treat that request as a Motion For Stay Pending Appeal.

While it is understandable that NationsBank might disagree with the conclusion reflected in the order, and while the possibility always exists that an order of this Court might be modified or reversed on appeal, it is inappropriate to stay the affect of the order indefinitely, as NationsBank requests, and deny unsecured creditors the benefit of the confirmed plan. While it is true that the funds at issue in

the case might be withheld for a time sufficient to exhaust the appellate process, such a step would virtually negate the rights of unsecured creditors to receive this money in timely fashion. The mere objection of NationsBank, having been considered and rejected, should not serve the purpose of detaining that benefit to unsecured creditors. Any stay pending appeal should be based upon a finding that NationsBank has a reasonable possibility for success in the appeal. The careful study which has been given to this case in this Court necessarily precludes a finding to the effect here. Any such request should be directed at the district court, where the considerations as to the possibility of success can be assessed from the view of the district court based upon its own interpretation of the law.

In order to give NationsBank an adequate chance to present such a request to the district court, the disbursements to unsecured creditors in this case will be detained for a period of ninety (90) days following the entry of this order. If no further order is received from the district court, and if no other order is entered in this Court in response to some other motion in this matter, the Chapter 13 Trustee will be instructed to proceed with disbursements in this case based on the terms of the confirmed plan.

Now, therefore it is hereby

ORDERED that the Motion For Stay Pending Appeal is

granted to the extent that disbursements to unsecured creditors in this case will be detained for a period of ninety (90) days following the date of the entry of this order; and it is hereby further

ORDERED that in the absence of some order from the district court or from this Court regarding the matter of these disbursements, the Chapter 13 Trustee is directed thereafter to proceed with disbursements to unsecured creditors in accordance with the terms of Debtor's confirmed Chapter 13 plan.

Dated this 9th of December, 1997.

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James D. Walker, Jr.  
United States Bankruptcy Judge